

NATIONAL PLANT BOARD

MODEL PLANT PEST LAW

June 19, 2000

Model Plant Pest Law

Subcommittee:

Donald Eggen, Chair - Eastern Plant Board (DE)

David Blackburn - Southern Plant Board (AR)

Robert Gronowski - Western Plant Board (NV)

Gary King - Central Plant Board (MI)

Randy Ciurlino - Eastern Plant Board (DE)

National Plant Board Model Plant Pest Law

| <u>Section</u> | <u>Page</u> |
|--|--------------------|
| §0001. Plant Pest Law; and Powers of the Department of Agriculture | 1 |
| §0002. Definitions | 2 |
| §0003. Entry on Lands; Authority to Conduct Inspections, Surveys, and Detections ... | 19 |
| §0004. Promulgation of Rules and Regulations; Collection of Fees | 19 |
| §0005. Eradication, Control, and Abatement of Nuisances; Issuing Control Orders | 20 |
| §0006. Discovery of Plant Pests; Official Marking of Infested or Infected Articles; Reporting of Plant Pest Discoveries | 21 |
| §0007. Establishment of Quarantine Pest Restrictions | 21 |
| §0008. Establishment of Regulated Non-Quarantine Pest Restrictions | 27 |
| §0009. Shipment of Plant Pests and Biological Control Agents; Biotechnology Permits; Interstate Origin Inspection and Pre-clearance Permits | 27 |
| §0010. Cooperation With Other Jurisdictions | 28 |
| §0011. Research and Investigation of Plant Pest Problems and Abatement Thereof | 29 |
| §0012. Violations (and Unlawful Acts) of Quarantine or Other Provisions of the Plant Pest Law; Failure to Pay Expenses | 29 |
| §0013. Enforcement by State Plant Regulatory Official: Administrative Fine; Order to Correct Violation; Request for Action by Attorney General and Criminal Complaints; Regulations | 30 |
| §0014. Administrative Hearing Procedures | 32 |
| §0015. Appeal of an Administrative Hearing | 32 |

| | |
|--|--------------------|
| <u>Section</u> | <u>Page</u> |
| §0016. Criminal Proceedings; Penalties | 33 |
| §0017. Compensation for the Loss or Destruction of Infested/Infected Plants/Plant Products/Articles | 33 |
| <i>[or]</i> | |
| §0017. No Compensation for the Loss or Destruction of Infested/Infected Plants/Plant Products/Articles | 33 |
| §0018. Recovery of Control Costs | 34 |
| <i>[or]</i> | |
| §0018. Expenses for the Abatement of a Public Nuisance - Property Lien; Notice of Lien; Action to Foreclose on a Lien; Sale of Property | 34 |
| §0019. Severability | 35 |
| §0020. Fee Schedule | 35 |

NATIONAL PLANT BOARD

MODEL PLANT PEST LAW

[This document is designed to be used as a working tool along with the National Plant Board Quarantine & Nursery Standards Committee (QNSC) Guidelines as you review your state law(s). We have attempted to do some of the work for you, by referencing the locations within the QNSC Guidelines that apply to the various parts of the Model Law along with examples from various state laws. In addition, reference is made to NAPPO and FAO documents, as well as issue papers by NAPPO and the NPB on official control and regulated non-quarantine pests. The sections included in this model are an attempt to outline the principal components of a model law. Each State Plant Regulatory Official will have to determine if additional sections need to be included to address specific issues concerning their state programs.]

*[Explanatory notes are in italics with brackets and the **model law language is in bold and not italicized**. Some suggested language is also presented in **bold-italics**. For purposes of consistency, ‘State Department of Agriculture’ and ‘Secretary of Agriculture’ are used throughout the document. You will need to change these terms to conform with the proper agency and title names used in your state. In addition, many states combine their plant pest and nursery laws into one, but the subcommittee has decided to treat these two regulatory areas separately. The Subcommittee has attempted to make both the Model Plant Pest law and Model Nursery law consistent with one another.]*

[Suggested Basic Components of a Plant Pest Law - A review of most of the state plant pest laws found the components contained in the Table of Contents as a basic structure. You may wish to change the order of the sections, combine sections, or delete sections. The Model Plant Pest Law Subcommittee requests National Plant Board member feedback regarding the basic components. Please send your written comments to the President of the National Plant Board or to Donald A. Eggen, Delaware Department of Agriculture, Plant Industries, 2320 South DuPont Highway, Dover, DE 19901-5515, or by e-mail to don@dda.state.de.us, or by fax to (302)697-4468.]

[Note: page numbers listed for the QNSC Guidelines are taken from the hard copy version not the web site version. Because the QNSC Guidelines may be revised, we have also included references to the specific Chapter, Section and Subsection of the QNSC Guidelines. For example: II.B.3. refers to Chapter II, Section B, Subsection 3 – Chapter II is on Pest Risk Analysis & Mitigation, Section B is on Pest Risk Analysis, and Subsection 3 is on Quarantine Pest Identification. Appendices in the QNSC Guidelines have a different format than the chapters and there are differences between appendices. Appendices A, B, C, D, E, J, K and N have Sections delineated with roman numerals I, II, III, etc., subsections with A, B, C, etc., and

subsubsections with 1, 2, 3, etc. For example Appendix E.I.A.4. on page 51 refers to Appendix E, Section I, Subsection A, and Subsubsection 4; Appendices F and H use 1, 2, 3, etc. for Section numbers and Appendix H uses a, b, c, etc. for subsections; and Appendices G, I, L, and M have sections headings in bold, underlined, or capital letters, but no numbering system. For these four appendices, we will refer to the specific appendix and the section heading.]

§0001. Plant Pest Law; and Powers of the Department of Agriculture

- (a) **This law shall be known as the “Plant Pest Law.”**
- (b) **The Department of Agriculture may abate, suppress, eradicate and prevent, by such means as shall be prescribed and provided by law or by rule, order, or regulation of the Department, all contagious, infectious, and noxious plant pests destructive to the state’s agricultural, forestry, or horticultural interests or to the State’s general environmental quality.**

[The language above is a suggestion and is taken from the Delaware Agriculture Code - General Provisions Chapter (3 Del. §101) and the Kansas Plant Pest Act (§2-2112). Any language that establishes the intent and authority of the Plant Pest Law can be considered. Clear authority needs to be established, and you will want to check with your State Attorney General for proper language to use in your state.]

§0002. Definitions

*[Definitions can be found in the QNSC Guidelines in the following Chapters and Appendices: Chapter II. Section A. Subsections 1-14. (pp. 2-4), IV.A.1-15. (pp. 18-19), **Appendix C. Sections I-II. (pp. 35-42)**, Appendix D.II.1-20. (pp. 44-45), Appendix G – Definition of Terms. 1-11. (pp. 62-63), Appendix H.1.a-b. (p. 69), Appendix K.II.1-10. (pp. 85-86), Appendix N.I. (p. 105), and Appendix N.IV.A. (p. 106). Appendix C is the principle location in the QNSC Guidelines for definitions. Not all the definitions found in the QNSC Guidelines are contained in the model law. Each state will have to determine which definitions are appropriate or if you wish to modify a definition to meet the circumstances within your state. For example, in the Delaware Plant Pest Law, sometimes a broader definition was used, and for other definitions a more specific definition was used depending on the advice from the State Attorney General’s Office. Your State Attorney General will have to provide input concerning the language and definitions used in your state plant pest law. The purpose here is to use the QNSC Guidelines to review your current Plant Pest Law’s definitions, and modify your state law(s) if you feel it is deficient or can be changed to more closely reflect the QNSC Guideline definitions. We tried to include as many definitions as possible that were thought to be relevant. Many of the current state laws do not*

contain very many definitions, and this is an area all National Plant Board members may wish to review. In addition, the USDA Plant Protection Act was passed in May 2000 and was not reviewed for consistency with this model law. At the time this version of the model law was developed, the issues of ‘Official Control’ and ‘Regulated Non-Quarantine Pest’ were being discussed at the international and national levels. The Subcommittee has attempted to include the latest concepts and definitions regarding these two issues into the model law.]

The following words shall, for purposes of this Law, be defined as follows:

- (1) **“Acceptable Level”- means the probable level of harm that is so low that the imposition of phytosanitary requirements is not required; or the probable level of harm that the trade partners agree to achieve through/by the imposition of pest risk mitigation measures or strategies and accept for continued trade when confirmed by phytosanitary certification of specified host commodities.**

[See Appendix C. Section I. (p. 35) – QNSC Guidelines.]

- (2) **“Agent” - means any person who on behalf of any other person receives on consignment, contracts for, or solicits for sale on commission, any plant product from a producer of such product, or who negotiates the consignment or purchase of any plant product on behalf of any other person.**

[See Appendix C.I. (p. 35) – QNSC Guidelines.]

- (3) **“Agriculture” - the production of plants and animals useful to man, including all forms of farm products and farm production.**

[There is no definition for “Agriculture” in the QNSC Guidelines, but you may wish to include one.]

- (4) **“Agricultural Commodities” - means plant products including any horticultural product.**

[See Appendix C.I. (p. 35) – QNSC Guidelines.]

- (5) **“Appliance” - means any box, tray, container, ladder, tent vehicle, implement or other article which is, or may be, used in connection with the growing, harvesting, handling, or transportation of any agricultural commodity.**

[See Appendix C.I. (p. 35) – QNSC Guidelines.]

- (6) **“Area”** - means any political division or subdivision or any officially defined area including adjacent parts of contiguous political divisions or subdivisions. *[Political divisions include nations and states or provinces within them. Political subdivisions include counties, parishes or municipios (in Mexico), and cities or municipalities. Officially defined areas also may include any other clearly defined and identifiable area including a specific property or facility.]*

[See Appendix C.I. (p. 35) – QNSC Guidelines.]

- (7) **“Biotic Agent”** - means any living entity.

[See Appendix C.I. (p. 35) – QNSC Guidelines.]

- (8) **“Certificate”** - means a document authorized or prepared by a duly authorized federal or state regulatory official that affirms, declares, or verifies that an article, nursery stock, plant product, shipment or any other officially regulated *article* meets phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or other set of legal requirements. Such documents are known by their purpose of issuance: Phytosanitary Certificate (for the purpose of verifying compliance with phytosanitary (quarantine) requirements); Nursery Stock Certificate (for the purpose of verifying compliance with nursery inspection and pest freedom standards); registration or certification tags, seals, etc. (for the purpose of verifying compliance with registration or certification requirements); etc.

*[See IV.C.7b (p. 24), IV.D. (p. 25), IV.F. (p. 26), **Appendix C.I. (p. 36)**, Appendix G - Definition of Terms. 1. (p. 62), Appendix G - Basic Provisions for Inclusion in Quarantines. 6. (p. 67), Appendix J.III.B.5. (p. 78), Appendix K.II.7. (p. 86), and Appendix L - NURSERY STOCK CERTIFICATION. (pp. 99-101) – QNSC Guidelines.]*

*[Note: there is a slight change from the QNSC definition – ‘regulated thing’ has been changed to ‘regulated **article**’.]*

- (9) **“Certification”** - means the act (by a duly authorized regulatory official of the Department) of affirming, declaring, or verifying compliance with phytosanitary (quarantine), nursery inspection, pest freedom, plant registration or certification, or any other set of legal requirements.

*[See **Appendix C.I. (p. 36)**, Appendix G - Basic Provisions for Inclusion in Quarantines. 6. (p. 67), Appendix K.II.6. (p. 86), Appendix L - NURSERY STOCK CERTIFICATION. (pp. 99-101) – QNSC Guidelines.]*

- (10) **“Compliance Agreement” - means any written agreement between a person and a regulatory agency to achieve compliance with any set of requirements being enforced by the agency.**

[See Appendix C.I. (p. 36); Appendix G - Definition of Terms. 2. (p. 62) – QNSC Guidelines.]

- (11) **“Control (of a pest)” - means suppression, containment, or eradication of a pest population.**

[FAO definition. See NAPPO Compendium of Phytosanitary Terms, February 1996, p.2.]

- (12) **“Conveyance” - a means of transportation.**

[There is no definition for “Conveyance” in the QNSC Guidelines, but you may wish to include one.]

- (13) **“Crop Seed” - means the seed or seedlike fruit of grain, beans, flax, beets, onions, or any other crop whether or not it is intended for planting purposes.**

[See Appendix C.I. (p. 37) – QNSC Guidelines.]

- (14) **“Department” - the State of (your state’s name) Department of Agriculture and includes, but is not limited to, its officers, inspectors, employees, agents, or representatives.**

[There is no definition for “Department” in the QNSC Guidelines, but you may wish to include one, or something similar, to define the organization for whom the state plant regulatory official works.]

- (15) **“Emergency Regulation” - means a regulation placed in effect without prior public notice in order to take immediate regulatory action.**

[See Appendix G - Types of Quarantine Action. 2. (p. 63) – QNSC Guidelines.]

- (16) **“Economic Impacts” - means significant damage or harm in terms of well documented: a) plant or crop destruction or injury; b) increased cultural or pest control costs; c) disruption of existing pest control strategies such as biological control, integrated pest management, sustainable agriculture or forestry, and cropping patterns or loss of a high value crop without replacement by an equally**

valuable and marketable crop; d) social adversities such as interference with home/urban gardening, human health, worker safety, food safety, or jobs; or e) environmental quality including added pesticide use, scenic and watershed damage, destruction of ecosystems, and food chain interference.

[See Appendix C.I. (p. 37) – QNSC Guidelines.]

- (17) **“Economically Unacceptable Impact”** - means that level of adverse economic impact which is identified and defined for plants for planting by a duly authorized federal or state plant protection organization.

[See National Plant Board Official Control Issue Paper, revised March 23, 2000. This term is used in the definition of a ‘regulated non-quarantine pest’.]

- (18) **“Endangered Area”** - means continent, region, country, state, county, province, municipality or any other discretely delineated political or otherwise lawfully constituted geographic area which has been officially identified for protection from injurious pests not already present.

[See Appendix C.I. (p. 37) – QNSC Guidelines.]

- (19) **“Eradication”** - means elimination of a pest based on absence determined by negative, mutually agreed upon, verification survey for the target pest.

[See Appendix C.I. (p. 38) – QNSC Guidelines.]

“Eradication” - means the complete removal of a plant pest from a given area.

[See Appendix H.1a. (p. 69) – QNSC Guidelines.]

- (20) **“Farm Product”** - includes every agricultural, horticultural, viticultural, and vegetable product of the soil, and bees and apiary products, hay, dried beans, honey, and cut flowers.

[See Appendix C.I. (p. 38) – QNSC Guidelines.]

- (21) **“Free from”** - means that a valid detection survey has been performed showing that a specific pest is not present; or that the article, nursery stock, plant, plant product or any other regulated thing has been visually inspected or tested in accordance with specified requirements and that no live life stage of the regulated pest(s) was found.

[See Appendix C.I. (p. 37) and II.A.14. – QNSC Guidelines.]

- (22) **“Hold Order”** - means any written directive *[issued by a duly authorized regulatory official to a person who owns or controls any appliance, article, nursery stock, plant, plant product, or any other article that has been determined to be, or likely to be, infested with regulated pest(s)]* prohibiting movement from one location to another, except as otherwise prescribed in the directive.

[See Appendix C.I. (p. 38); Appendix G - Types of Quarantine Action. 1. (p. 63) – QNSC Guidelines.]

[or]

*[An alternative wording for this definition, without changing the intent, is as follows:
“Hold Order” - means an order or notice written by the Department to the owner(s) or person(s) in charge or in possession of a premises, plant, conveyance, or article infested or infected with or exposed to infestation or infection of regulated plant pest(s), making it unlawful to move the aforementioned article(s) unless treated in accordance with the Department's prescribed procedures.]*

- (23) **“Host”** - means any appliance, article, commodity, nursery stock, plant, plant product or any other thing which is capable of transporting a pest from one place to another.

[Note: hosts vary considerably in the degree to which they may facilitate the movement of a pest from one place to another. These variations must be taken into consideration in pest risk analysis and mitigation and you may wish to modify your definition for ‘Host’ to encompass these concepts.]

[See Appendix C.I. (p. 38); Appendix G - Definitions of Terms. 3. (p. 62) – QNSC Guidelines.]

- (24) **“Infected”** - a plant that has been determined by the Department to be contaminated with an infectious, transmissible, or contagious pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist. This includes disease conditions, regardless of their mode of transmission, or any disorder of plants which manifest symptoms which, after investigation are determined by a federal or state plant protection organization, to be characteristic of an infectious, transmissible, or contagious disease.

[There is no definition for “Infected” in the QNSC Guidelines or in the NAPPO

Compendium of Phytosanitary Terms, but you may wish to include one. See Delaware Code 3 Del. §1101.]

(25) “Infested”

[There are two different definitions for ‘Infested’ in the QNSC Guidelines. Both are listed below.]

“Infested” - means officially determined to be contaminated by a pest using prescribed methods.

[See Appendix C.I. (p. 38) – QNSC Guidelines.]

“Infested” - means actually infested with the pest or so exposed to infestation that would be reasonable to believe that an infestation exists.

[See Appendix G - Definition of Terms. 4. (p. 62) – QNSC Guidelines.]

[or]

[NAPPO definition: “Infested” - contaminated with a pest or so exposed to a pest that contamination can reasonably be expected to exist.]

[or]

[An alternative definition used in the Delaware Plant Pest Law (3 Del. §1101), and based on the NAPPO definition, is as follows: “Infested” - means a plant that has been determined by the Department to be contaminated by a plant pest, or so exposed to the aforementioned that contamination can reasonably be expected to exist.]

(26) “Inspector”

[There are two different definitions for ‘Inspector’ in the QNSC. Both are listed below.]

“Inspector” - any person duly authorized by a regulatory agency to perform any required regulatory activity.

[See Appendix C, page 38 - QNSC Guidelines.]

“Inspector” - an employee of the regulatory agency concerned or other person authorized by the agency or under basic State law to enforce the provisions of the

quarantine and regulations.

[See Appendix G - Definition of Terms. 5. (p. 62) – QNSC Guidelines.]

- (27) **“Limited Distribution”**- means a pest known to occur in the state, but with a limited distribution to a single small geographic area or a few small geographic areas which are widely separated within the state (widely but not generally distributed).

[See Appendix D.V.A.2. (p. 49) – QNSC Guidelines.]

- (28) **“Mark”** - the Department shall affix, for purposes of identification or separation, a conspicuous official indicator to, on, around, or near, plants or plant material, known or suspected to be, infected or infested with a plant pest. This includes, but is not limited to: paint, markers, tags, seals, stickers, tape, signs, or placards.

[There is no definition for ‘Mark’ in the QNSC Guidelines, but you may wish to include one. See Delaware Code 3 Del. §1101.]

- (29) **“Move”** - means to ship, offer for shipment, receive for transport, carry or, in any manner whatsoever, relocate a regulated *article* from one place to another.

*[See Appendix C.I. (p. 39) – QNSC Guidelines. Note that ‘regulated thing’ has been changed to ‘regulated **article**’.]*

“Move” - means to ship, offer for shipment, receive for transportation, carry, or otherwise transport, move, or allow to be moved.

[See Appendix G - Definition of Terms. 7. (p. 63) – QNSC Guidelines.]

[or]

[NAPPO definition: “Move” - means to ship, offer for shipment, receive from transportation, carry, or otherwise transport.]

- (30) **“Noxious weed”** - means any species of plant which is, or is liable to be, troublesome, aggressive, intrusive, detrimental, or destructive to agriculture, silviculture, or important native species, is difficult to control or eradicate, and which a plant protection organization designates by law to be a noxious weed.

[See Appendix C.I. (p. 39) – QNSC Guidelines.]

- (31) **“Official” - means authorized, implemented and directed, or performed by a governmental plant protection organization.**

[See Appendix C.I. (p. 39) – QNSC Guidelines.]

[or]

[FAO and NAPPO definition: “Official” - means established, authorized or performed by a National Plant Protection Organization.]

- (32) **“Officially controlled” - means the conduct, by an official public pest prevention agency, of eradication or intensive suppression activity including various treatments, quarantine and other measures with the goal of eliminating an isolated infestation or prevention of further spread within the endangered area. It does not include private general agricultural, urban forestry, or home garden pest control measures conducted by individuals against pests permanently established in an endangered area.**

[See Appendix C.I. (p. 39) – QNSC Guidelines.]

[or]

[The above definition may change, depending on developments by the Interim Commission on Phytosanitary Measures (ICPM) Working Group on Official Control and the Glossary Group of the IPPC. The proposed definition by the Working Group at the meeting in Bordeaux, France, March 21-24, 2000:

“Official Control” - means the application and active enforcement of mandatory phytosanitary regulations or procedures with the objective of eradication or containment of quarantine pests or for the management of regulated non-quarantine pests.]

[or]

[The proposed definition in the NAPPO Discussion Paper on the Interpretation of “Official Control” (09-17-99) is (note in the definition below: ‘the National Plant Protection Organization’ is replaced by ‘a duly authorized federal or state plant protection organization’):

“Official Control” - means any measure, established and/or authorized and/or endorsed and/or performed by a duly authorized federal or state plant protection organization for the suppression, containment or eradication of quarantine pests or for the suppression of the level of infestation by regulated non-quarantine pests.]

[or]

[An alternative definition proposed by Bill Callison (CDFA) in the National Plant Board Official Control Issue Paper (revised 03/23/00):

“Official Control” - means regulated by a duly authorized federal or state plant protection organization pursuant to federal or state laws and/or regulations.]

- (33) **“Owner(s)” - includes, but is not limited to: the person, persons, family, group, firm, association, business, company, incorporated entity, or organization with the legal right of possession, proprietorship of, or responsibility for the property or place where any of the regulated articles as defined in this Law are to be found, or person(s) who is in possession of, in proprietorship of, or has responsibility for the regulated articles.**

[There is no definition for “Owner” in the QNSC Guidelines, but you may wish to include one. See Delaware Code 3 Del. §1101.]

[or]

[NAPPO definition: “Owner” - the person or organization having legal right of, and responsibility for, possession of regulated articles.]

- (34) **“Pathway” - means any natural or artificial means or avenue that allows for the movement of a pest from one area to another.**

[See Appendix C.I. (p. 39); Appendix D.II.12. (p. 44) – QNSC Guidelines.]

- (35) **“Permit” - means any document issued by a duly authorized regulatory official that allows the movement of any regulated thing [or article] from one location to another in accordance with specified conditions or requirements and for a specified purpose.**

[See Appendix C.I. (p. 40). See also Appendix G - Definitions of Terms. 6. and 11. for definitions of ‘Limited Permit’ and ‘Scientific Permit’, respectively.]

- (36) **“Person” - includes individual, firm, corporation, company, limited liability company, society, association, or other business entity.**

[See IV.A.11. (p. 19), Appendix C.I. (p. 40), and Appendix G - Definitions of Terms. 8. (p. 63) – QNSC Guidelines. The definitions for ‘Person’ on these pages are slightly different, so all the different entities were included in the above definition.]

[or]

[The following definition of “Person” is the federal definition taken from 7 USC §151 (U.S.C. Title 7 - AGRICULTURE, Chapter 8 - Nursery Stock and Other Plants and Plant Products): “The word ‘person’ as used in this law shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations.”]

[or]

[NAPPO definition: “Person” - means an individual, corporation, company, society, organization, association, or other business entity growing, handling, or moving regulated articles.]

- (37) **“Pest” - means any biotic agent (any living agent capable of reproducing itself) or any of the following that is known to cause damage or harm to agriculture or the environment:**

(a) Any infectious, transmissible, or contagious disease of any plant; or any disorder of any plant which manifests symptoms or behavior which, after investigation and hearing, is found and determined by a duly constituted federal, state or local *plant protection organization*, to be characteristic of an infectious, transmissible, or contagious disease.

(b) Any form of animal life.

(c) Any form of vegetable life.

*[See II.A.1. (p. 2), IV.A.12. (p. 19), and Appendix C.I. (p. 40) – QNSC Guidelines. In part (a), ‘pest prevention agency’ has been replaced with ‘**plant protection organization**’.]*

“Pest” - means any biotic agent that causes harm or any abiotic disorder that is harmful.

[See Appendix D.II.13. (p. 44) – QNSC Guidelines.]

“Pest” - means all living stages of the insect, disease, or other pest organism of plants or plant products against which the quarantine is directed.

[See Appendix G - Definitions of Terms. 9. (p. 63) – QNSC Guidelines.]

[or]

[NAPPO definition: **“Pest/Plant Pest”** - means any biotic agent capable of causing injury to plants or plant products.]

- (38) **“Pest Control”** - means the reduction of pest populations to the point that economic damage, injury or loss is reduced to an economically tolerable level.

[See Appendix C.I. (p. 40) – QNSC Guidelines. ‘Pest control’ is sometimes more broadly or generically defined to include all actions taken to reduce or eliminate pest populations including control, eradication, management, and suppression.]

“Plant Pest Control” - means the employment of a publicly supported program to eradicate, retard the spread of, or to reduce the level of loss resultant from a plant pest.]

[See Appendix H.1a. (p. 69) – QNSC Guidelines.]

- (39) **“Pest Free Area”** - means an area kept free from a specific pest.

[See Appendix C.I. (p. 40) – QNSC Guidelines.]

- (40) **“Pest Risk Analysis”** - means characterizing the nature of pest hazard or harm; identifying the degree of probability or likelihood of harm; analyzing the degree to which risk mitigation measures or strategies can reduce the probability of harm to an acceptable level; and recommending pest risk mitigation measures or strategies.

[See Appendix C.I. (p. 40) – QNSC Guidelines.]

- (41) **“Phytosanitary Certificate”** (See **“Certificate”**).

[See Appendix C.I. (pp. 36 and 40) – QNSC Guidelines.]

- (42) **“Phytosanitary Measures”** - means any growing season or post-harvest treatment or any other method (tactic) or strategy (combination of methods or tactics) specified in a quarantine to reduce pest risk to an acceptable level.

[See Appendix C.I. (p. 41) – QNSC Guidelines.]

- (43) **“Plant”** - includes any part of a plant, tree, *aquatic plant*, plant product, *plant material*, shrub, vine, fruit, *rhizome*, *sod*, vegetable, seed, bulb, stolon, tuber, corm,

pip, cutting, scion, bud, graft, or fruit pit, also including:

- (a) ***Agricultural commodities: plant materials including any horticultural product.*** [See Appendix C.I. (p.38) – QNSC Guidelines.]
- (b) ***Crop seed: the seed or seedlike fruit of grain, beans, flax, beets, onions, vegetables, fruits, or fiber plants, or any other crop, whether or not it is intended for planting purposes.*** [See Appendix C.I. (p. 37) – QNSC Guidelines.]
- (c) ***Farm product: every agricultural, horticultural, viticultural, and vegetable product of the soil, and bees and apiary products, hay, dried beans, honey, and cut flowers.*** [See Appendix C.I. (p. 38) – QNSC Guidelines.]
- (d) ***Nursery Stock.***
- (e) ***Non-cultivated or feral plants, gathered from the environment.***
- (f) ***Plants produced by tissue culture, cloning, or from stem cell cultures or other prepared media culture.***

[See II.A.2. (p. 2), IV.A.12. (p. 19), and Appendix C.I. (p. 41) – QNSC Guidelines. The ‘Plant’ definition was expanded to include a listing of other definitions used to describe plants and plant products (the bold- italicized portions). It is not necessary to include (a) through(f) in your definition. They are listed here to add specific examples to the definition, and you may wish to include them in your definition.]

- (44) **“Plants for planting” - means any part of a plant, tree, plant product, shrub, vine, fruit, vegetable, seed, bulb, stolon, tuber, corm, pip, cutting, scion, bud, graft, or fruit pit that is intended for planting.**

[See National Plant Board Official Control Issue Paper, revised 03-23-00. This term is used in the definition for ‘regulated non-quarantine pest’.]

- (45) **“Plant Pest” - includes, but is not limited to: any pest of plants, agricultural commodities, crop seed, farm products, horticultural products, nursery stock, or non-cultivated plants. This includes but is not limited to: insects, snails, nematodes, fungi, viruses, bacterium, microorganisms, mycoplasma like organisms, weeds, plants, or parasitic higher plants.**

[See Delaware Code 3 Del. §1101 for a specific definition of ‘Plant Pest’. When

developing the Delaware Nursery Law and Plant Pest Law, the State Attorney General's Office suggested that the definition be as specific as possible when defining a 'Plant Pest', and to list as many types of organisms that could be considered a plant pest.]

“Plant Pest” - means a living organism which damages, or is capable of damaging, desirable vegetation and may include insects, mites, other invertebrate and vertebrate animals, viruses, bacteria, fungi, and other plants not to exclude seed plants. (An organism not commonly considered a pest may, under certain conditions become damaging, and may then be designated a pest by appropriate authority.)

[See Appendix H.1b. (p. 69) – QNSC Guidelines.]

- (46) “Pre-clearance” - an agreement between quarantine officials of exporting and importing states to pass plants, plant material, etc., through quarantine by allowing the exporting state to inspect the plants pre-shipment, rather than the importing state inspecting the shipment upon arrival.**

[For information see III.J. (p. 17), IV.E. (p. 26), and Appendix K.IV.B. (pp. 88-89) – QNSC Guidelines. There is no specific definition for ‘Pre-clearance’ in the QNSC Guidelines, but you may wish to include one.]

- (47) “Public Nuisance”**

[Note: the terms ‘Nuisance’ and/or ‘Public Nuisance’ are typically defined in a State’s Administrative and/or Criminal Code. A suggested definition is listed below.]

Any premises, plants, appliance, conveyances or articles which are infected or infested with any plant pests that may cause significant damage or harm, or premises where any plant pest is found.

[See the California Plant Quarantine and Pest Control Law §5401 – §5402; see also Nevada Law §555.110.]

- (48) “Quarantine”**

[There are two different definitions for ‘Quarantine’ in the QNSC. Both are listed below.]

“Quarantine” - means a legal instrument duly imposed or enacted by the Department as a means for mitigating pest risk. These actions include, but are not limited to: confinement or restriction of entry, movement, shipment, or transportation

of plants known or suspected to be infected or infested with regulated pests.

[See Appendix C.I. (p. 41) – QNSC Guidelines. You may wish to include the additional second sentence following the definition (bold-italicized sentence) to clarify actions that can be taken when a quarantine is imposed.]

[The first sentence is the definition found in Appendix C.I. (p. 41). You may wish to add the following sentence, which can be found in III.B.2. (p. 11) of the QNSC Guidelines, in lieu of the italicized second sentence.]

A quarantine enables enforcement of prohibitions, restrictions, treatment and certification requirements and other pest risk mitigation or management measures identified as being necessary to prevent the harm or damage that could result from the introduction and permanent establishment of an exotic pest in an endangered area.

[or]

“Quarantine” – a quarantine is a restriction, imposed by duly constituted authorities, whereby the production, movement or existence of plants, plant products, animals, animal products, or any other article or material, or the normal activity of persons, is brought under regulation, in order that the introduction or spread of a pest may be prevented or limited, or in order that a pest already introduced may be controlled or eradicated, thereby reducing or avoiding losses that would otherwise occur through damage done by the pest or through a continuing cost of control measures.

[See Appendix F.I. (p. 55) – QNSC Guidelines.; and the National Plant Board Membership Manual (p. 14).]

- (49) “Quarantine Pest” - means an economically important pest that does not occur in an endangered area, or which is being officially controlled in an endangered area, and for which economic impact cannot be reduced to an acceptable level by means or methods other than phytosanitary measures.**

[See II.A. (p. 2); Appendix C.I. (p. 41); Appendix K.II.10. (p. 86) – QNSC Guidelines.]

[or]

“Quarantine Pest” - means a pest of economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.

[FAO and NAPPO definition, or see NAPPO Discussion Paper on Interpretation of “Official Control”, 09-17-00.]

- (50) **“Registration” - means the official recording of a growing location, person, plant, sales location or any other thing or place as one that has met specified requirements and therefore eligible for a particular activity, operation or purpose.**

[See Appendix C.I. (p. 41) – QNSC Guidelines.]

- (51) **“Regulated Article” - means any thing the movement of which is governed by a quarantine or any other law.**

[See Appendix C.I. (p. 41) – QNSC Guidelines.]

“Regulated Article” - means any article of any character, as described in the quarantine, carrying or capable of carrying the plant pest against which the quarantine is directed.

[See Appendix G - Definitions of Terms. 10. (p. 63) – QNSC Guidelines.]

- (52) **“Regulated Non-Quarantine Pest” - means a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the United States by a duly authorized federal or state plant protection organization.**

[See National Plant Board Official Control Issue Paper, revised March 23, 2000. The above definition is based on the IPPC definition. See also the QNSC Guidelines Executive Summary on page iv.]

- (53) **“Regulated Pest” - means quarantine pest or regulated non-quarantine pest.**

[There is no definition for ‘Regulated Pest’ in the QNSC Guidelines. This definition encompasses the two types of regulated pests (quarantine and regulated non-quarantine) defined in the Model Plant Pest Law, and is based on information in the National Plant Board Official Control Issue Paper and the NAPPO Discussion Paper on Official Control. This definition may be subject to further review and modification.]

- (54) **“Restrictive Measure” - means a phytosanitary measure allowing only specified actions that are subject to certain requirements.**

[Based on the definition of ‘Restriction’ in the NAPPO Compendium of Phytosanitary

Terms, February 1996, page 20.]

- (55) “Secretary” - the Secretary of the State of (your State name) Department of Agriculture or his or her designee.**

[There is no definition for ‘Secretary’ in the QNSC Guidelines, but you may wish to include one, or one similar, in order to define the legal authority within your state agency.]

- (56) “Shipment” - means any article or thing which is, may be, or has been transported from one place to another.**

[See IV.A.15. (p. 19); and Appendix C.I. (p. 41) – QNSC Guidelines.]

- (57) “Significant damage or harm” - means that level of adverse impact that results in economic damage, injury or loss that exceeds the cost of control for a particular crop.**

[See II.A.8. (p. 3); and Appendix C.I. (p. 41) – QNSC Guidelines.]

- (58) “State Plant Regulatory Official” - means the employee designated by the Secretary of Agriculture to enforce the provisions of the state’s plant pest laws, quarantines, and regulations.**

[There is no definition for ‘State Plant Regulatory Official’ in the QNSC Guidelines. The definition above is based on the definition for ‘Inspector’ in Appendix G - Definitions of Terms. 5. (p. 62) – QNSC Guidelines.]

- (59) “State Quarantine” - means a regulation promulgated pursuant to state authority that identifies a pest or pests and imposes requirements for certification of regulated articles as being in compliance with specified restrictions or requirements for pest freedom.**

[See National Plant Board Official Control Issue Paper, revised March 23, 2000.]

- (60) “Suppressive Area” - means a plant pest infested area where phytosanitary measures are being applied to reduce the plant pest population and thereby limit the spread.**

[Based on the definition for ‘Suppression’ in the NAPPO Compendium of Phytosanitary Terms, February 1996, page 22.]

- (61) **“Survey” - means the systematic search for pests in accordance with mutually agreed upon methods designed to assure confidence in their meaning and accuracy for pest prevention purposes such as control, suppression, eradication, verification of pest free areas, identification of possible harm, evaluation of probability of harm, and taking appropriate actions to prevent predicted significant harm. Surveys may be performed for the purposes of detection, delimitation, or verification.**

[See Appendix C.I. (p. 41) and Appendix D.II.19. (p. 45); see also Appendix D.IV. (pp. 46-48) for additional information on surveys. – QNSC Guidelines.]

§0003. Authority to Conduct Inspections, Surveys, and Detections; Entry on Lands

- (a) **The Department may send its officers, employees or agents into each county of the State, for the purpose of inspecting, examining and determining thereby the healthfulness and general condition of the environmental, horticultural, forestry, and agricultural interests.**

[Note: The Model Plant Pest Law Subcommittee concluded the language in §0003(a) includes determining the ‘quality’ of the plants.]

- (b) **In order to accomplish the purposes of this law, the Department, its officers or designees may enter upon and inspect any public or private premises, lands, or means of conveyance, or article of any person within this State, for the purpose of inspecting, surveying, treating, controlling or destroying any plant or plant pest.**

[This language, in part, is taken from the Delaware Agriculture Code - General Provisions Chapter, 3 Del. §102 and §103. Any language that establishes your Department’s authority to conduct inspections and surveys throughout your state should be considered. You will want to check with your state’s Attorney General for proper language to use in your state. For other examples see the Kansas Plant Pest Act §2-2115; the Arkansas Emergency Plant Act §77-123; and the North Carolina Plant Pest Law §106-422 at: <http://www.agr.state.nc.us/plantind/regs/plntpest.htm#106-422>.]

§0004. Promulgation of Rules and Regulations; Collection of Fees

- (a) **The Department may adopt reasonable regulations to implement and carry out the purposes of this law as to eradicate, suppress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State. The Department may adopt**

regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for suppressing such as cannot be economically eradicated, and for preventing their spread within the state. Reasonable regulations for preventing the introduction of plant pests from outside the State may also be adopted.

*[See North Carolina Plant Pest Law §106-420 at:
<http://www.agr.state.nc.us/plantind/regs/plntpest.htm#106-420.>]*

- (b) **The Department is further authorized to prescribe and collect a schedule of fees to be collected for plant pest inspections and plant pest certification activities (see §0020).**

§0005. Eradication, Control and Abatement of Nuisances; Issuing Control Orders

- (a) **Public Nuisance.**

Any premises, plants, appliance, conveyances or articles which are infected or infested with any plant pests that may cause significant damage or harm, or premises where any plant pest is found, are a public nuisance, and shall be prosecuted as such in all actions and proceedings. All remedies which are given by law for the prevention and abatement of a nuisance apply to such a public nuisance. It is unlawful for any person to maintain such a public nuisance.

[See the California Plant Quarantine and Pest Control Law §5401 – §5402.]

- (b) **Control Order.**

In order to prevent the introduction or spread of plant pests, the Department shall issue orders for any control measures it deems necessary. These control orders may indicate the type of control to be utilized, the compound or material, the manner or the time of application, and who will carry out the Control Order. Control shall be obtained by any approved method or any other legal treatment. *A Control Order may include measures to control or abate the plant pest to an acceptable level; eradicate the plant pest; restrict the movement of the plant pest or any material, article, appliance, plant, person, or means of conveyance suspected to be carrying the plant pest; destroy plants or plant products infested or infected with a plant pest; or confiscate materials suspected to be infested or infected with a plant pest.*

[There are many examples in the various state laws dealing with control actions,

abatement of nuisances, and methods of operation. The above example is from the Delaware Plant Pest Law, 3 Del. §1102(b). The last sentence has been added to include some of the possible methods included in a Control Order.]

- (c) **The Department's methods of operations shall not be limited to those specifically listed in this Section.**

[See Delaware Plant Pest Law, 3 Del. §1102(i).]

§0006. Discovery of Plant Pests; Official Marking of Infested or Infected Articles; Reporting of Plant Pest Discoveries

- (a) **Upon knowledge of the existence of a regulated pest *or a pest that may cause significant damage or harm* within the state, the Department may conspicuously mark all plants, materials, and articles known or suspected to be infected or infested with the regulated pest. The Department shall notify the person(s), owner(s), or the tenant(s) in possession of the premises or area in question of the existence of the regulated pest and of the prescribed control measures. The aforementioned person(s) must, within the prescribed time limit, implement the conditions of the Department's Control Order or be subject to civil *and/or criminal* penalties.**

[NOTE: You may wish to place the marking of materials in your department's rules and regulations instead of the code or law. This is an option each state could consider.]

[See the Delaware Plant Pest Law, 3 Del. §1102(c).]

- (b) **The State Plant Regulatory Official shall immediately report new plant pest discoveries within their state to the Secretary of Agriculture, State Plant Regulatory Officials of other states as he or she deems necessary, and the U.S. Department of Agriculture.**

[Appendix G - Operating Principles. 1. and 2. (p. 65) – QNSC Guidelines.]

§0007. Establishment of Quarantine Restrictions

- (a) **Scope.**

The Department may impose a quarantine restriction, whereby the production, movement or existence of plants, plant products, agricultural commodities, crop

seed, farm products, or any other article or material, or the normal activity of persons, is brought under regulation, in order that the introduction or spread of a plant pest may be prevented or limited, or in order that a plant pest already introduced may be officially controlled or eradicated, thereby reducing or avoiding losses that would otherwise occur through damage done by the pest or through a continuing cost of control measures.

(See Appendix F (p. 55) – QNSC Guidelines. For another example see the Illinois Insect Pest and Plant Diseases Law, §240.250 - Scope).

(b) Types of Quarantine Actions.

- (1) Hold Order (Stop Sale Notice) – The Department may issue Hold Orders to take prompt regulatory action in plant pest emergencies on regulated articles.**
- (2) Emergency Regulation – The Department may place an emergency regulation without prior public notice in order to take immediate regulatory action to prevent the introduction or establishment of a plant pest.**
- (3) Federal Quarantine – The Department may enter into cooperative agreements with the U.S. Department of Agriculture *[and other federal, state, city, or county agencies]* to assist in the enforcement of Federal Quarantines. The Department may adopt a quarantine or regulation against a pest or an area not covered by a Federal Quarantine. The Department may seize, destroy, or require treatment of products moved from a federally regulated area if they were not moved in accordance with the Federal Quarantine regulations or, if certified, they were found to be infested with the pest organism.**

[Note: the phrase in bold-italics is a suggestion that each state may wish to consider.]

(4) State Plant Quarantines.

- (i) State Interior Quarantine (Intrastate) – The Department may enact a quarantine against a plant pest that is not of quarantine significance to other states, to prevent the spread of the plant pest within its borders; or adopt a quarantine against a plant pest of regional or national significance when no Federal Quarantine has been adopted.**

(ii) **Parallel State Interior Quarantine (Intrastate)** – The Department may enact a Parallel State Interior Quarantine against a plant pest which is of limited distribution in the state and is the subject of a Federal Quarantine. The quarantine regulates intrastate movement between quarantined and non-quarantined areas of the state. This quarantine action is required if the Federal Quarantine is to apply only to the infested portion of the state.

(iii) **Uniform State Quarantine (Interstate)** – The Department may enact a Uniform State Quarantine with other infested states which are parallel with respect to their basic quarantine requirements. The regulated area in the Uniform State Quarantine should describe the area to be regulated. The quarantine shall include a reference to regulated areas of all the infested states under the Uniform State Quarantine. When a plant pest of regional or national significance occurs only in limited areas of the state and no Federal Quarantine is adopted, a State Interior Quarantine shall be enacted.

(iv) **Standard State Exterior Quarantine (Interstate)** – The Department may enact a Standard State Exterior Quarantine if the plant pest is not established in the state but is established in other states *[and no Federal Quarantine has been adopted]*. The Department may require controls at destination as are necessary to provide protection to their industries, the public, and the environment.

[Note: You may wish to add to the first sentence in §0007(b)(4)(iv) the following phrase in bold-italics as seen above “...and no Federal Quarantine has been adopted.”]

[See Appendix G - Types of Quarantine Action. 1. to 4. (pp. 63-64) – QNSC Guidelines.]

(c) Description of Regulated Areas.

The regulated area to be described in a quarantine may involve the entire state, portion(s) of the state (areas), or a list of names and locations of infested properties.

- (1) Regulated areas may be subdivided into suppressive and generally infested areas in those quarantines where it is desirable to augment suppressive or eradication measures being applied in certain areas, and it is believed necessary to control movement into such areas from generally infested areas.**
- (2) Provisions in the quarantine may be made for adding to the regulated area any other area known to be infested, or which is found to be infested after**

adoption of the quarantine, when so declared by the Department through publication of a notice to that effect in local newspapers or through direct written notice to affected property owners.

- (3) When an infestation in a certain regulated area has been eliminated through the application of treatments, to the extent that movements of the regulated articles therefrom would no longer present a pest risk, (except movement from a few remaining infested properties in the area which can be controlled by the State Plant Regulatory Official by serving a written Hold Order on each owner of an infested property), the quarantine may be lifted on such a regulated area, and it should not be necessary to list in the quarantine the names and locations of the infested properties under hold order. *Another approach would be to exempt such areas from specified requirements until eradication had been achieved.*

(d) **Movement of Regulated Articles.**

(1) **Interstate Shipments.**

(i) Any regulated article that is prohibited interstate movement or is required to be certified, if moved interstate from an area regulated by a state or Federal Quarantine, shall be refused entry into the state.

(ii) The owner or carrier of regulated articles which are reportedly originating in non-regulated areas of a quarantined state must provide proof of origin of the regulated articles through an invoice, waybill, or other shipping document.

(iii) If only a portion of a state is under a State or Federal Quarantine, the shipment will not be refused nor a certificate required if the article originates from a non-regulated area of the shipping state, unless the article is found to be infested or prohibited.

(2) **Intrastate Shipments.**

(i) Certificates or permits are required for the movement of non-exempted regulated articles when:

(aa) Moving from a regulated area to any point outside thereof.

(bb) Moving from a generally infested area into a suppressive area.

- (cc) **Moving within a suppressive area where such control over this movement is desirable.**
- (ii) **Certificates or permits should not be required for any regulated article originating outside of a regulated area moving to another non-regulated area, or moving through or re-shipped from a regulated area when the point or origin of the article is clearly indicated on a waybill, bill of lading, shipper's invoice, or other similar document accompanying the shipment, provided that shipments moving through or being re-shipped from a regulated area must be safeguarded against infestation while within the regulated area in a manner satisfactory to an inspector.**
- (iii) **Certificates should not be issued unless provisions of other applicable quarantines have been met and the regulated articles:**
- (aa) **Originate in a non-infested portion of the regulated area and have not been exposed to infestation while within the regulated area; or**
- (bb) **Have been examined and found to be free of infestation; or**
- [This method of certification should not be allowed in certain programs if it is impossible to visibly determine whether the pest is present – i.e., nematodes, witchweed seed, etc. The thorough cleaning of a product is an authorized treatment procedure but the examination of such product after cleaning is to determine whether it is cleaned and not to visually inspect it for the pest.]*
- (cc) **Have been treated in accordance with approved procedures; or**
- (dd) **Have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, no infestation would be transmitted thereby.**
- (iv) **Limited permits may be issued to allow the movement of regulated articles to a specified destination for limited handling, utilization, or processing, provided the inspector has determined that such movement will not result in the spread of the pest and requirements of other quarantines have been met.**
- (v) **Control over the movement of regulated articles from infested premises to non-infested areas within a regulated area may be provided for when such**

control over movement within a regulated area is desired to prevent pest spread. This provision usually will be applicable only when eradication treatments are being applied and would be handled through a direct written notice to the property owner concerned.

(vi) Compliance agreements should be required as a basis for the issuance of certificates or permits in bulk to industry for their issuance, and they are desirable to explain the main provisions of the quarantine for that particular concern.

(e) Public Notification of a State Quarantine.

- (1) If the circumstances permit, public notice of a proposed State Quarantine should be given and those interested should be invited to contribute facts in their possession at a public hearing. But if the objective would be defeated by the delay required for such notice and discussion, the Department shall issue an emergency regulation and assume responsibility for the decision to impose or withhold quarantine action until such time a State Quarantine can be implemented.**
- (2) Upon establishment of a State Quarantine, and upon institution of modifications or repeal, notices are to be sent to the principal parties at interest, including federal and state authorities, and to organizations representing the public involved in the restrictive measures.**
- (3) Quarantine action taken prior to public notice is to be brought to the attention of all concerned regulatory officials immediately. If a Federal Quarantine is in effect against a pest or a Federal Quarantine is anticipated, all State Plant Regulatory Officials are to be informed and the affected state(s) consulted prior to making any announcement of action anticipated to adopt, amend or repeal such a quarantine. When a Standard State Exterior Quarantine is applied, other State Plant Regulatory Officials are to be informed of anticipated amendments or revocations.**

[See Appendix F.6. and F.17. (pp. 56 and 59, respectively); and Appendix G - Operating Principles. 2. (p. 65) – QNSC Guidelines. See your State's Administrative Procedures Act or regulations for public notification requirements. For example, Nevada's Administrative Regulations NRS 233B.]

(f) Repeal of Quarantine.

Regulations establishing quarantines will be repealed when their purposes have been accomplished. If a quarantine has attained its objective, or if the progress of events has clearly proved that the desired end is not possible of attainment by the restrictions adopted, the quarantine should be promptly reconsidered, either with a *[re]view* or repeal or with intent of substituting other measures.

[See III.D.10. (p. 13); and Appendix F.16. (p. 58) – QNSC Guidelines.]

§0008. Establishment of Regulated Non-Quarantine Pest Restrictions

The Department may promulgate regulations for non-quarantine pests under the following conditions: regulations apply to specific pests of plants for planting with a specified economically unacceptable impact; and the measures to control the level of infestation must achieve the required level of control.

[See National Plant Board Official Control Issue Paper, revised 03-23-00; and the NAPPO Discussion Paper on Interpretation of “Official Control”. See also the QNSC Guidelines Executive Summary, major concept #2 on page iv.]

§0009. Shipment of Plant Pests and Biological Control Agents; Biotechnology Permits; Interstate Origin Inspection and Pre-clearance Permits; and Export Certification

[NOTE: the intent of §0009 is to establish a parallel set of state permits to federal permits. This includes the review of federal permits.]

The shipment, introduction into or release within this state of any plant pest, noxious weed, or genetically engineered plant or plant pest, or any other organism which may directly or indirectly affect the plant life of this state as an injurious pest, parasite, or predator of other organisms, or any arthropod, is prohibited, except under permit issued by the Department.

[See Florida Plant Industry Law §581.083(1).]

(a) Permits for Shipment of Plant Pests.

No person may sell, offer for sale, move, convey, transport, deliver, ship, or offer for shipment, any plant pest *[or biological control agent]*, without a U.S. Department of Agriculture - Animal and Plant Health Inspection Service - Plant Protection and Quarantine - Application and Permit to Move Live Plant Pests and Noxious Weeds,

PPQ Form 526, supplements thereto, or any publication revising or superseding the aforementioned, or its state equivalent. Permits may be issued only after the Department determines that the proposed shipment or use will not create a hazard to the agricultural, forest, or horticultural interests of this state or the state's general environmental quality. The permit shall be affixed conspicuously and on the exterior of each shipping container, box, package, appliance, etc., or accompany each shipping container, box, package, appliance, etc., as the Department directs.

[See the Delaware Plant Pest Law, 3 Del. §1106(a). If you wish to include 'Biological Control Agents' this is the place to do it. See also the Florida Plant Industry Law §581.083(3) as an example of an additional subsection dealing with biological control agents.]

(b) Biotechnology Permits.

The Department may enter into cooperative agreements with USDA to provide oversight and regulation of genetically engineered *[or enhanced]* plants or any organism that may be a plant pest. This includes reviewing USDA Biotechnology Notifications and Permits; inspection of facilities conducting agricultural biotechnology; and field release sites.

(c) Interstate Origin Inspection and Pre-clearance Permits (Compliance Agreements).

The Department may issue permits for interstate origin and pre-clearance of quarantine articles based on pest risk mitigation tactics or strategies that can be enforced at the point of origin of the shipment. Interstate origin inspection programs can be developed to achieve compliance with quarantine restrictions, regulated non-quarantine pest restrictions, and product quality standards.

[See III.J. (p. 17); and Appendix J (P. 75) – QNSC Guidelines.]

(d) Export Certification and Compliance Agreements.

The Department has the authority to enter into compliance agreements for the purpose of certifying articles as pest free for export certification.

[This section recommended by Dave Nelson, North Dakota SPRO.]

§0010. Cooperation With Other Jurisdictions

- (a) **The Department may enter into cooperative agreements with organizations, including but not limited to: persons, civic groups, or governmental agencies, to adopt and execute plans to detect and control areas infested or infected with plant pests. Such cooperative agreements may include provisions of joint funding of any control treatment.**

[See Appendix F.10. and F.11. (p. 57); and VI. (p. 30) – QNSC Guidelines.]

- (b) **If a plant pest occurs and cannot be adequately controlled by individual person(s), owner(s), tenant(s), or local units of government, the Department may conduct the necessary control measures independently or on a cooperative basis with federal or other units of government.**

[See the Delaware Plant Pest Law, 3 Del. §1102(g)(h); Appendix B (pp. 33-34); Appendix H.5. and H.6. (p. 70); and Appendix I. Cooperation with Canada and Mexico and Notification of Other Countries. – QNSC Guidelines.]

§0011. Research and Investigation of Plant Pest Problems and Abatement Thereof

As it deems necessary, the Department shall conduct research to prevent the introduction or spread of plant pests causing or having the potential to cause significant damage or harm in the state, and to investigate the feasibility of their control or eradication.

[See the Delaware Plant Pest Law, 3 Del. §1102(a), and the California Plant Quarantine and Pest Control Code, §5321. See also Appendix F.14. (p.58) – QNSC Guidelines.]

[Note: there are different ways each state could address this issue and section of the model law. The Department could collaborate with research institutions, enter into contractual agreements, or conduct the research themselves. The above wording is a suggestion to give the Department the authority to conduct research.]

§0012. Violations (and Unlawful Acts) of Quarantine or Other Provisions of the Plant Pest Law; Failure to Pay Expenses

[Note: on the advice of many State Attorney Generals, or by state regulations, specific violations of the act must be stated.]

- (a) **Any person who interferes with the Department in the enforcement of the provisions of this law, as determined in an administrative hearing, shall be assessed a civil**

penalty for each count, *[or be subject to criminal prosecution by the State Attorney General]*.

- (b) Any person who is not a Department employee or its authorized representative, who removes markings placed by the Department for the purpose of identification of plants infested or infected by a regulated plant pest, is interfering with the Department's enforcement of the provisions of this law, as determined in an administrative hearing, and shall be assessed a civil penalty for each count, *[or be subject to criminal prosecution by the State Attorney General]*.
- (c) Any person who willfully or knowingly violates a quarantine duly imposed by the Department, as determined in an administrative hearing, shall be assessed a civil penalty for each count, *[or be subject to criminal prosecution by the State Attorney General]*.
- (d) Any person(s) who willfully or knowingly ships plant pests, noxious weeds, biological control agents, genetically engineered *[or enhanced]* plants or plant pests, or any other regulated article without the knowledge or permission of the Department, as determined in an administrative hearing, shall be assessed a civil penalty for each count, *[or be subject to criminal prosecution by the State Attorney General]*.
- (e) Any person(s) who refuses to comply with the provisions of this law shall be assessed a civil penalty for each infested or infected unit of plants or plant material, *[or be subject to criminal prosecution by the State Attorney General]*.
- (f) It is unlawful for any person to create or maintain a public nuisance.
- (g) Failure to pay any penalties assessed under this law is a violation subject to civil penalties and/or criminal prosecution.
- (h) *Any person(s) who violates any portion of this act may be subject to civil penalties and/or criminal prosecution.*

[See the Delaware Plant Pest Law, 3 Del. §1109. To include criminal prosecution, add the sections that are in bold-italics.]

§0013. Enforcement by State Plant Regulatory Official: Administrative Fine; Order to Correct Violation; Request for Action by Attorney General and Criminal Complaints; Regulations

- (a) **The State Plant Regulatory Official shall adopt regulations specifying a schedule of administrative fines which may be imposed upon notice and a hearing, for each violation of the provisions of this law inclusive, or regulations adopted pursuant thereto. The maximum fine that the State Plant Regulatory Official may impose for each violation may not exceed:**

(1) For first violation, [\$1,500];

(2) For second violation, [\$3,000];

(3) For each subsequent violation, [\$5,000].

[Note: intent is to establish a graduated scale of fines. These fines are suggested minimum dollar amounts.]

All fines collected by the State Plant Regulatory Official pursuant to this section must be deposited with the State Treasurer for credit to the State General Fund.

- (b) **The State Plant Regulatory Official may:**

(1) In addition to imposing an administrative fine pursuant to this section, issue an order requiring a violator to take appropriate action to correct the violation; or

(2) Request the State Attorney General to investigate or file criminal complaint against any person that the State Plant Regulatory Official suspects may have committed flagrant or repeated violations of any of the provisions of this law.

- (c) **The State Plant Regulatory Official shall adopt such regulations as are necessary to provide for adequate notice and conduct of a hearing required by this section (see §0014).**

- (d) **Any corporation, common carrier, agent, or employee of any corporation, or any other person violating or assisting in violating any of the provisions of this law, is guilty of a gross misdemeanor and shall be punished by imprisonment in jail for not more than one year, or by a fine of not more than \$5,000, or both a fine and imprisonment. The prosecuting attorney and the Department may recover the costs of the proceeding, including investigative costs, against a person convicted of a gross misdemeanor pursuant to this section.**

- (e) Any railroad company, express company, or other common carrier which shall carry, haul, or transport from any county, portion of a county, farm, nursery, or apiary within the state, under quarantine, to any other part of the state, any agricultural commodity forbidden to be so exported shall be liable for any damages occurring by reason of such exportation.

Such damages may be recovered by action against railroad company, express company, or other common carrier brought in any court of competent jurisdiction within two (2) years after the date of such offense or offences if more than one. Such action shall be instituted in the name of the state, for and on behalf of the person, firm, or corporation suffering injury, and the attorney general shall prosecute same.

[See Nevada Code NRS 554.085, 554.090, and 555.070]

§0014. Administrative Hearing Procedures

- (a) Failure to comply with the provisions of this law shall result in the assessment of a civil penalty.
- (b) No civil penalty shall be imposed until an administrative hearing is held before the Secretary or his or her designee. Administrative hearings for the provisions of this law shall be conducted within 30 days of the violation of the provisions of this law. The Department shall issue a decision in writing to the person(s) charged with a violation of a provision of this law within 30 days of the conclusion of the administrative hearing.
- (c) The person(s) charged with a violation of a provision of this law will be notified in writing of the date and time of the aforementioned administrative hearing. The aforementioned person(s) shall have the right to appear in person, to be represented by counsel, and to provide witnesses in his or her own behalf.
- (d) The Secretary, for the purposes of investigation of a possible violation of this law and for its hearings, may issue subpoenas, compel the attendance of witnesses, administer oaths, take testimony, and compel the production of documents. In case any person summoned to testify or to produce any relevant or material evidence refuses to do so without reasonable cause, the Department may compel compliance with the subpoena by filing a motion to compel in *[Superior]* Court, which shall have jurisdiction over this matter.
- (e) The Department shall preserve a full record of the proceedings and a transcript may

be purchased by any interested person.

[From the Delaware Plant Pest Law, 3 Del. §1107. You will need to enter the administrative hearing procedures for your department and the proper name(s) for the courts in your state.]

§0015. Appeal of an Administrative Hearing

A person who feels aggrieved by the Department as a result of the administrative hearing held under the authority of this law may take appeal, within 30 days, to the [Superior] Court. After a full hearing, the Court shall make such decree as seems just and proper. Written notice of such appeal, together with the grounds, therefore, shall be served upon the Secretary of the Department.

[From the Delaware Plant Pest Law, 3 Del. §1108.]

[Note: If you have an Administrative Hearing; then an appeal can go to your state court system. You will have to check with your State Attorney General's Office.]

§0016. Criminal Proceedings; Penalties

[Note: Every state is different in how they handle criminal prosecutions. Each state official will have to discuss this section with your State Attorney General (i.e. criminal misdemeanor, felony, etc.).]

§0017. Compensation for the Loss or Destruction of Infested/Infected Plants/Plant Products/Articles

The Secretary, when determined necessary to fulfill the objectives of this law, may authorize payment of reasonable compensation to growers/farmers in infested areas for not planting host crops pursuant to instructions issued by the Secretary prior to the planting season, for losses resulting from the destruction of any regulated article, provided, no payment may be authorized for the destruction of regulated articles moved in violation of any regulation or any host planted contrary to the instructions issued by the Secretary, and further provided, that any compensation payment program must be approved by the state legislative assembly.

[From North Dakota Code §4-33-09.]

[or]

§0017. No Compensation for the Loss or Destruction of Infested/Infected Plants/Plant Products/Articles

No damages shall be awarded to the owner for the loss or destruction of infested or infected plants, plant products, or other articles, or any reimbursement made for expenses incurred incident to the application of the prescribed preventive or remedial measures. Under the provisions of this law the infected or infested plants, plant products, or articles are considered to be a public nuisance.

[From Rhode Island Code §2-16-7.]

[Note: Dependant upon an individual state's policy/position there could be a provision for limited compensation or none. Therefore, we have provided the above two options for each state to consider depending on their individual circumstances.]

§0018. Recovery of Control Costs

- (a) The Department shall, within 90 days, provide notice of all expenses incurred while controlling a regulated pest infestation or infection, to the person(s), owner(s), or tenant(s) associated with the aforementioned infected or infested plants.**
- (b) The Department shall, within 90 days, provide notice of all expenses incurred while controlling the spread of a regulated pest infestation or infection to plants found in dangerous proximity, to the person(s), owner(s), or the tenant(s) associated with the aforementioned plants.**
- (c) If the aforementioned person(s), owner(s), or tenant(s) fail, neglect, or refuse, after 30 days, to pay all the control expenses incurred by the Department, or to establish a payment schedule approved by the Secretary, a civil penalty of not less than double the amount of the Department expenses incurred to control the regulated pest infestation or infection shall be imposed upon them.**
- (d) The aforementioned person(s), owner(s), or tenant(s) shall also be liable for the imposition of a civil penalty as prescribed in this Law.**

[From the Delaware Plant Pest Law, 3 Del. §1104]

[or]

§0018. Expenses for the Abatement of a Public Nuisance - Property Lien; Notice of Lien; Action to Foreclose on a Lien; Sale of Property

- (a) All monies paid by the Department constitute a lien on the property and premises from which the public nuisance has been removed or abated pursuant to this law, and may be recovered by an action against such property or premises.
- (b) A notice of lien must be filed and recorded in the office of the county recorder of the county in which the property or premises are situated within thirty (30) days after the right of lien has been accrued.
- (c) An action to foreclose a lien may be commenced at any time with in one (1) year after filing and recording the notice of lien, which action must be brought in the proper court by the district attorney of the county in the name and for the benefit of the Department.
- (d) When the property or premises is sold, proceeds must be paid to the Department to satisfy the amount of all existing liens and costs, and the overplus, if any, must be paid to the owner of the property or premises if he/she is known, and if not, into the court for his/her use when it is ascertained. All sales under the provisions of this law, must be made in the same manner and upon the same notice as sales of real property under the execution from a justice's court.

[From Nevada Code NRS 555.120]

[Note: two suggested methods for recovering costs are listed above. You will have to review this section with your State Attorney General's office. You may wish to use another method to recover costs.]

§0019. Severability

If any sections, sentence, clause, phrase, or other portion of this law is for any reason held to be unconstitutional, the decision shall not affect the validity of the remaining portions thereof.

[From Rhode Island Code 2-16-13.]

§0020. Fee Schedule

[If applicable; ex. Federal Phytosanitary Inspection & Certification fees. Include your state's fee schedule here or you can adopt a fee schedule by regulation.]

[Note: request to include Department's ability to establish fee structure is covered in §0004(b) of the Model Plant Pest Law.]